

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TABERNA CAPITAL MANAGEMENT, LLC,

Plaintiff,

- against -

SIDNEY B. DUNMORE, MICHAEL A. KANE,  
and DHI DEVELOPMENT f/k/a DUNMORE  
HOMES, LLC,

Defendants.

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08 CV 1817 (JSR)

**ORAL ARGUMENT REQUESTED**

**PLEASE TAKE NOTICE THAT** on June 12, 2008, at 4:00 p.m., or as soon thereafter as the matter may be heard in the Courtroom of the Honorable Jed. S. Rakoff, United States District Court Judge, Southern District of New York, located at 500 Pearl Street, New York, NY 10007, Room 14-B, Defendant Michael Kane (“Kane”) will and hereby does move this Court to: (1) dismiss the second, fourth and sixth claims alleged in the Complaint (the “Complaint”) for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6); (2) dismiss count four of the Complaint for failure to plead fraud with particularity pursuant to Federal Rule of Civil Procedure 9(b); and (3) dismiss the Complaint in its entirety for failure to join an indispensable party and failure to plead nonjoinder pursuant to Federal Rule of Civil Procedure 19.

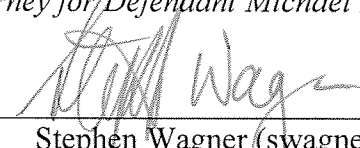
This Motion is based on this Notice of Motion and Motion, Memorandum of Law and upon the papers, records, and pleadings on file herein.

**PLEASE TAKE FURTHER NOTICE**, that, pursuant to the Scheduling Order issued by the Court on or about April 17, 2008, if you wish to object to the Motion, the objection shall be in writing and shall conform with the Federal Rules of Civil Procedure, Local Rules of the United States District Courts for the Southern and Eastern Districts of New York and Individual Rules of Practice of the Honorable Jed S. Rakoff, United States District Court Judge. Any objection to the Motion shall be filed with this Court and served on all parties by May 22, 2008. Further, any reply to any opposition to the Motion shall be filed with this Court and served on all parties by May 30, 2008.

Kane requests oral argument on the Motion.

Dated: May 1, 2008  
New York, New York

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